

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0208
Sales and Use Tax
For The Tax Period 2004 - 2005

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-5-15; IC § 6-8.1-5-1(b)(c); 45 IAC 15-11-2(b); *Indiana Department of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the assessment of sales tax.

STATEMENT OF FACTS

The Taxpayer is a corporation selling used cars. After an audit for the tax period 2004-2005, the Indiana Department of Revenue (Department) assessed additional sales tax and interest. The Taxpayer protested the assessment of sales tax. A telephone hearing was held and this Letter of Findings results.

1. Sales and Use Tax – Imposition.

DISCUSSION

Prior to July 1, 2004, IC § 6-2.5-5-15 provided an exemption to the imposition of the sales tax for the purchase of cars in Indiana that were immediately taken out of state to be titled in that other state. The Taxpayer's business practice during this period was to have the purchaser sign an affidavit stating that the purchaser met the requirements to qualify for this exemption. When the purchaser signed the affidavit, the Taxpayer did not collect the sales tax on behalf of the state. On July 1, 2004, the exemption for cars immediately taken out of state for titling was repealed. Between August 22, 2004, and September 1, 2004, the Department first notified the Taxpayer of the repeal of this sales tax exemption. The Taxpayer alleges that she immediately called the Department and was told to start collecting tax from that date forward. After notification of the change in law, the Taxpayer

began to collect and remit sales tax on cars taken immediately to other states for titling. The Department assessed sales tax on the cars that the Taxpayer sold during July and August 2004 that would have been exempt prior to the repeal of the exemption for cars immediately taken out of state and titled in the other state. The Taxpayer protested this assessment.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c). Exemption statutes are strictly construed against the Taxpayer. *Indiana Department of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003).

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. Since IC § 6-2.5-5-15 was repealed effective July 1, 2004, the Taxpayer should have collected sales tax on the cars sold to be immediately taken out of state for titling. Taxpayers have the responsibility to remain informed about changes in the law. 45 IAC 15-11-2(b). In this situation, the Taxpayer did not collect and remit sales tax as required by law. The Department properly assessed the sales tax against the Taxpayer.

The Taxpayer also argued that the assessment was unfair. The Department recognized that the Taxpayer changed practices to conform to the new law soon after the repeal of the exemption. Therefore, the Department did not assess a penalty against the Taxpayer.

FINDING

The Taxpayer's protest is respectfully denied.